



American Federation of
Government Employees (AFGE)
Local 17, AFL-CIO

December 1, 2022

Dear Chairmen and Ranking Members:

We hope this message finds you well!

We write to advise you of troubling hiring practices for Veterans Law Judges (VLJs)¹ at the Board of Veterans' Appeals (Board) which are negatively impacting the Board's overall quality and productivity, while destroying employee morale. This should concern Congress and the American people because the Board is a critical part of VA's benefits system in that the Board's administrative appeals decisions heavily influence how VA benefit claims are adjudicated throughout the Veterans Benefits Administration. Our Veterans deserve better.

For decades, VLJ applicants had to possess a minimum of seven years' experience in Veterans law. This made perfect sense because VLJs must learn to apply voluminous esoteric laws and regulations, as well as constantly evolving caselaw from the U.S. Court of Appeals for Veterans Claims. VA disability claims also involve complex medical terminology. Board employees were therefore shocked to learn that, in February 2020, without any notice, this seven-year requirement was mysteriously eliminated from the VLJ hiring criteria.² This paved the way for VLJs to be appointed with no Veterans law experience whatsoever. One of the initial

¹38 U.S.C. § 7101(a) provides that the Board be composed of members to "conduct hearings and dispose of appeals properly before the Board in a timely manner." A regulation promulgated in 2003 provides that Members of the Board may also be called Veterans Law Judges. 38 C.F.R. §20.101(b). There is no statutory or regulatory provision suggesting that "Judge" without descriptive modifiers is an appropriate appellation for a Board Member.

² The current USAJOBS posting requires seven (7) years of post-bar admission experience as a licensed attorney preparing for, participating in, presiding over and/or appealing formal hearings or trials involving litigation and/or administrative law at the Federal, State, or local level. The 2019 hiring announcement for the VLJ position states "applicants must have a full seven (7) years of experience in Veterans law as a licensed attorney preparing for, participating in and/or reviewing formal hearings and evidence involving litigation and/or administrative law at the Federal, State, or local level.

inexperienced VLJ hire told a senior attorney that it was “an experiment.” When the Union asked how the experiment was going, the senior attorney said, “It’s been a complete failure because he doesn’t know what he’s doing and he’s slow.” Since the summer of 2021, over 85 percent of VLJs hired at the Board arrived without a shred of experience in Veterans Law. This radical shift to hiring inexperienced VLJs is bad for Veterans and taxpayers.

Congress and Veterans Service Organizations have expressed concern that Veterans often wait years before receiving a decision on their VA benefit claims. Therefore, reducing the backlog of appeals and issuing timely decisions ought to be a top priority. Indeed, that is the Board’s statutory mission.³ Yet data show that the inexperienced VLJs issued significantly fewer decisions than their counterparts with seven or more years of experience. From October 2021 to June 2021, thirteen inexperienced VLJs issued, on average, between 1 and 6 decisions per week. In contrast, VLJs with seven years or more of experience issued, on average, between 13 and 26 decisions per week. And since this data was collected, an additional nine inexperienced VLJs have been hired. Based on these figures, the inexperienced VLJs will likely issue approximately 3,432 decisions compared to their experienced counterparts who will issue approximately 14,872 decisions – a staggering difference of over 11,000 decisions, representing more than 10 percent of Board’s annual output.

This radical decline in productivity, moreover, does not account of the fact that **experienced** VLJs are now tasked with training their new **inexperienced** colleagues. A VLJ’s job is extremely difficult. They are already under immense pressure to review and sign at least 20 decisions per week, conduct numerous hearings, and mentor attorneys. Indeed, even attorneys are being assigned to train these inexperienced VLJs to whom they report – in other words, experienced Board attorneys are tasked with training their supervisors. This practice conflicts with the Board’s longstanding policy that VLJs are charged with training and mentoring attorneys. *See VLJ Performance Standards (attached)*. When VLJs lack the knowledge and experience to train their attorney-subordinates, a knowledge gap results in the more junior attorney ranks. This knowledge gap will ultimately reduce the quality of Board decisions. As things stand, a junior attorney cannot rely on the inexperienced VLJ supervisor to answer any questions of law, and more experienced attorneys cannot engage in productive dialog regarding complex or novel issues.

The policy of hiring VLJs with no Veterans law experience has also demoralized the attorneys. The effective foreclosure of promotion opportunities to highly experienced attorneys is discouraging to those who’ve given years of dedicated service to the Board. AFGE Local 17 has received a deluge of emails and phone calls from attorneys who are outraged by their inability to compete for a VLJ position despite their superior qualifications. Some have indicated they plan

³ 38 U.S.C. § 7101(a).

on retiring earlier than expected, while others said they will only work to rule – also known as quiet quitting. For example, Attorney Thomas Douglas has been one of the most capable and highest producing Board attorneys for the past 20-plus years. Mr. Douglas disclosed to me that he had planned on staying with the Board for another five years – that is, until “he saw the writing on the wall.” Mr. Douglas said he is retiring next year. These complaints are also reflected in an August 2021 survey of over 200 Board attorneys in which 74 percent of respondents agreed with the statement: “The hiring of Veterans Law Judges from outside the Board has discouraged my hope of being promoted to that position.” Only 5.5 percent disagreed. This should cause alarm because more than 400 attorneys and VLJs have left the Board in just the past five years. Clearly, the Board’s new hiring practice undermines President Biden’s goal that the federal government be a model employer by attracting and retaining qualified talent.

Experienced VLJs also feel demoralized because they, more than anyone, understand the years of experience required to master VA benefits law. They’ve dedicated years of service to be appointed as VLJs, only to see attorneys they’ve mentored pushed aside while retired military officers fill these coveted positions, many of whom are known to the Board’s senior leadership. And after the Board ignored their concerns, a group of experienced VLJs felt it necessary to blow the whistle and advise a prominent outside law firm specializing in Veterans’ benefits litigation of the new hiring practices and how they will negatively impact Veterans. *See attached correspondence*. Spectrum News also published an article regarding hiring practices at the Board on September 22, 2022.⁴ The VA’s press team declined to comment on the story. Members of Congress were also alerted to the Board’s new hiring practices, including Senator Josh Hawley, who commented that “the administration doesn’t appear to be taking it seriously.”

AFGE Local 17 has attempted to engage in good faith discussions with Secretary McDonough about this issue. The Secretary ignored the Union’s concerns as expressed to him in a September 2021 letter. *See attached*. In a recent virtual town hall meeting, the Board’s newly appointed Chairman Jaime A. Areizaga-Soto stated that his motto is “mission first, people always” – and indicated that “professional growth and leadership opportunities” are two main organizational objectives. Yet, when asked repeatedly in the chat feature why no GS-14 attorneys have been promoted to the rank of VLJ in over a year and a half, he remained silent.

Congress granted the Board’s full-budget request of \$196 million in fiscal year (FY) 2021. For FY 2022, an additional \$32 million was granted for the purpose of hiring additional staff, including 35 additional VLJs. The appropriations request for FY 2023 stands at \$285 million, representing a 25 percent increase (\$57 million) above the FY 2022 budget. The stated purpose of the budget increase request is, in part, the hiring of an additional 12 VLJs. Hiring

⁴ See <https://www.ny1.com/nyc/all-boroughs/politics/2022/09/22/veteran-affairs-comes-under-fire-after-massive-backlog>

inexperienced VLJs, which negatively impacts the Board's overall quality and productivity, while employees leave or work to rule out of frustration, is an unproductive use of taxpayer money. American taxpayers deserve to have their hard-earned money spent judiciously. The practice of hiring VLJs lacking in relevant experience rather than highly knowledgeable attorneys both from within and outside of VA reflects a fundamental lack of respect for taxpayers and Veterans.

We respectfully request your assistance in resolving this important matter. The employees we represent and the experienced VLJs deeply care about the Board's mission "to conduct hearings and decide appeals properly before the Board in a timely manner." 38 U.S.C. § 7101(a). We ask that you use the tools at your disposal to end this harmful practice at the Board of Veterans' Appeals for the sake of our nation's Veterans.

Respectfully,

Douglas Massey

Douglas E. Massey, Esq.
President
AFGE Local 17
(202) 361-3017

CC:
Jaime Areizaga-Soto
Chairman, Board of Veterans' Appeals